IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.598 OF 2006

In

SUIT NO.1726 OF 1992

M/s.Meditronics Corporation of India

& Ors. : Appellants

(Orig. Defendants)

V/s.

Dr.Mrs.Salima A. Rais : Respondent

(Orig. Plaintiff)

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Mr.H.N.Thakore i/b. Mr.Thakore Jariwala & Associates for the appellants.

Mr.H.S.S.Murthy with Ms Sapna Samant for the respondent.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : AUGUST 22, 2006.

ORAL ORDER (Per R.M.Lodha,J.)

1. The original defendants are in appeal against the judgement dated 12.7.2006 passed by the learned trial Judge in decreeing the plaintiff's suit in the sum of Rs.16,43,200/- together with future interest at the rate of 18% per annum from the date of filing of the suit until realisation and costs of the suit for want of written statement while exercising the powers under Order VIII

Rule 10 of the Code of Civil Procedure.

2. The respondent (hereinafter referred to as the "plaintiff") is a Medical Practitioner and runs a hospital in the name and style of "Rais Hospital". It is averred in the plaint that acting on the advertisements and representations and technical brochures issued by the defendants, the plaintiff placed an order for supply, installation and commissioning of Ultrasound Scanner Equipment in the year 1988 in the hospital. The equipment was found defective. The plaintiff complained to the defendants to rectify the defects in the equipment, but nothing was done successfully. In the month of April 1990, the defendants took away a part of the equipment (Sector Probe) through their representative which was never repaired and returned. The cost of the equipment was Rs.6,32,000/-. In the suit for damages, the plaintiff claimed a sum of Rs.16,43,200/-, computing the cost of the equipment, interest at the rate of 20% per annum for three years and liquidated damages at the rate of 100% of the cost of the equipment.

3. The writ of summons appears to have been served upon the defendants in the year 1992. The suit was posted for directions before the Prothonotary & Senior Master on 29.1.1997 as no written statement had been filed until that time by the defendants. On 29.1.1997, time of six

weeks was given to the defendants for filing written statement. Written statement was not filed within the time granted by the defendants and the suit was transferred to the list of "undefended suit". On 12.6.1998 the matter was posted before the Court under the caption "for ex parte decree" and the trial Judge passed an order to accept the written statement if filed by 19.6.1998. The defendants failed to file the written statement within the time so granted. Nothing happened in the suit for almost eight years. It came to be posted under the category of "undefended suit" before the trial Judge on 7.6.2006. On that date, three weeks' time was granted to the plaintiff for filing compilation of documents and affidavit of evidence. Again on 28.6.2006, one week's time was granted to the plaintiff for filing compilation of documents and affidavit of evidence. Then we are informed that the matter appeared before the Court on 5.7.2006 and was adjourned to 12.7.2006. On 12.7.2006 nobody appeared for the defendants. On behalf of the plaintiff, compilation of original documents and affidavit of evidence in support of the claim were filed. The learned trial Judge held that the allegations contained in the plaint remained uncontroverted and decreed the suit under Order VIII Rule 10 of the Code of Civil Procedure, as indicated above.

4. To complete the facts, we may notice here that after

the judgement came to be passed by the learned trial Judge on 12.7.2006 decreeing the plaintiff's suit under Order VIII Rule 10 of the Code of Civil Procedure, the defendants took out a Notice of Motion for setting aside the judgement and decree dated 12.7.2006. In the affidavit-in-support of the said Notice of Motion filed on 20.7.2006, the defendants explained the reasons due to which written statement could not be filed in time. They also set out that, in fact, the written statement was ready on 7.7.2006 and Notice of Motion for condonation of delay in filing the written statement was also affirmed on that date and a copy of the written statement was given to the Advocate for the plaintiff on 8.7.2006. Notice of Motion for condonation of delay in filing the written statement was got ready and registered and numbered on 11.7.2006. On 11.7.2006 there was a series of bomb blasts in the city of Mumbai and the functioning of the defendants' Advocates' office was disrupted and, therefore, on 12.7.2006 neither the defendants nor their Advocates could appear. However, we are informed by the Advocate for the defendants that the said Notice of Motion was not pursued further being not maintainable in law and the present appeal was preferred challenging the judgement and decree dated 12.7.2006.

5. We heard the counsel for the parties and perused the available material.

6. In Balraj Taneja v. Sunil Madan (AIR 1999 SC 3381), the Supreme Court considered the provisions of Order VIII Rule 10 of the Code of Civil Procedure and held that before passing a judgement against the defendant, it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgement could possibly be passed recording the Court's satisfaction. The Supreme Court also referred to the provisions contained in Order XX Rule 4(2) and section 2(9) of the Code of Civil Procedure. The Supreme Court held that judgement should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner. The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgement. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order VIII Rule 10, the Court has to write a judgement which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

7. Does the impugned judgement meet the requirement of

law, particularly section 2(9) and Order XX Rule 4(2) of the Code of Civil Procedure? That is one of the questions before us for consideration.

8. The impugned judgement reads thus:-

> "1. This is an undefended suit against all the defendants. The Plaintiff has filed compilation of original documents and affidavit of evidence in support of the claim. The allegations made in the plaint have gone uncontroverted. Consequently the Suit deserves to be decreed by virtue of the provisions of Order VIII Rule 10 of the Code of Civil Procedure.
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> 3.(sic) Suit is decreed in terms of prayer clause (a) and (d).
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> 4. Decree be drawn up accordingly."

We are afraid, by no stretch of imagination, the impugned judgement can be said to meet the requirement of a judgement as contemplated under section 2(9) and Order XX Rule 4(2). Though the original documents and affidavit of evidence seem to have been tendered by the plaintiff in the Court on that date, the impugned judgement does not indicate the consideration and analysis thereof. After all, the suit filed by the plaintiff is a suit for damages and the Court was required to see as to whether the affidavit that has been tendered by the plaintiff was sufficient to prove the plaintiff’s case.

9. On this count alone, the impugned judgement is

required to be set aside.

10. Besides that, we find that there were justifiable reasons for the defendants' absence on 12.7.2006. On 11.7.2006 the city had witnessed a series of bomb blasts and normal life came to be disrupted. The case of the defendants is that because of the situation prevailing on 11.7.2006 due to the bomb blasts in the city, the functioning in the office of the Advocates for the defendants got disrupted and due to that, neither the defendants nor their Advocates could appear on 12.7.2006. There is no challenge to these facts by the plaintiff. Even if we assume that for want of written statement, the Court could justifiably proceed with the suit, the right of the defendants in cross-examining and contesting the evidence led by the plaintiff in support of her case is not taken away. While narrating the facts, we have noticed that twice earlier, opportunity was granted to the plaintiff for filing compilation of documents and affidavit of evidence, but that was not done and it was only on 12.7.2006 that the compilation of original documents and affidavit of evidence in support of the plaintiff claim were tendered. The defendants were thus deprived of their legitimate right of cross-examining the plaintiff's witness and their absence on 12.7.2006 has been shown justifiable, and for good reasons.

11. Counsel for the plaintiff relied upon the judgement of the Supreme Court in the case of Om Prakash Gupta v. Union of India (AIR 2000 SC 3585). In that judgement, the apex Court held that where written statement was not filed for a period of more than two years, granting further time to a party for filing written statement was not justified. In our view, the conduct of the party in not filing the written statement (prior to the amendment in C.P.C.) has to be seen in the facts of each case and no straight jacket formula can be applied that where written statement is not filed within a particular time, no further opportunity should be granted. In the present case, though the defendants were negligent in not filing the written statement for many years despite reasonable opportunity having been granted to them, but for the reasons that we have indicated above, particularly that the impugned judgement does not meet the requirement of law and that absence of the defendants on 12.7.2006 was justified, we are of the view that one opportunity may be given to the defendants for filing written statement so that the case could be decided on merits. More so when admittedly, before 12.7.2006, the copy of the written statement was already given to the Advocate for the plaintiff and the Notice of Motion was already taken out by the defendants for condonation of delay in filing the written statement.

12. The inconvenience that has been caused to the plaintiff may be compensated by awarding reasonable costs.

13. We, accordingly, allow the appeal and set aside the judgement dated 12.7.2006, subject to the defendants paying costs of Rs.25,000/- (Rupees Twenty Five Thousand only) to the plaintiff within three weeks from today. The defendants are permitted to file written statement within three weeks. The suit shall proceed thereafter accordingly.

R.M. LODHA, J.

S.A. BOBDE, J.